

IN THE COUNTY COURT OF
THE FIFTEENTH JUDICIAL
CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

STATE OF FLORIDA

DIVISION: DVTD

CASE NO: 2019MM003721AXX

vs.

BETHANY FEDORENCHIK,
Defendant

**MOTION TO STRIKE MOTION FOR RETURN OF PERSONAL PROPERTY
FILED BY NON-PARTY NICOLE GUERRIERO**

COMES NOW the Defendant, BETHANY FEDORENCHIK, by and through undersigned counsel, NELLIE L. KING, and hereby files this Motion to Strike Motion for Return of Personal Property Filed by Non-Party Nicole Guerriero. As grounds therefore, the undersigned states:

1. The Defendant was charged with Stalking as per Fla. Stat. Sect 784.048(2).
2. The State Attorney filed a Nolle Prose on May 24, 2019.
3. Nicole Guerriero, a witness in this case, filed a Motion for Return of Personal Property on July 19, 2019.
4. Ms. Guerriero is a non-party to this case. Ms. Guerriero seeks the return of personal property. Although the motion fails to specifically identify the personal property Ms. Guerriero seeks to be returned to her, she presumably seeks the return of **copies of electronic evidence or data** collected in this matter. This is not tangible property which belongs to Ms. Guerriero like a firearm, jewelry, or a cell phone. This duplicated evidence was properly collected and listed in this case. This copy of electronic evidence is a public

record and cannot be removed or destroyed pursuant to the dictates of Florida Chapter 119, “Florida’s Sunshine Law.”

5. Ms. Guerriero filed a Notice of Hearing on July 19, 2019, setting the Motion for Return of Personal Property on July 26, 2019, at 8:00 a.m. before this Honorable Court.
6. Non-party Nicole Guerriero did not contact the parties to this action – the State of Florida, nor the undersigned as a representative of the Defendant - regarding their respective positions regarding Ms. Guerriero’s request. Nor did non-party Nicole Guerriero contact either party regarding the scheduling of Ms. Guerriero’s motion.
7. On July 23, 2019, this Honorable Court struck Ms. Guerriero’s Notice of Hearing for improperly scheduling the motion without proper notice to the parties.
8. Ms. Guerriero then scheduled the hearing on her motion for August 5, 2019, again without coordinating the date with the parties.
9. Ms. Guerriero now indicates in communication to the Court that the Defendant should not be notified nor heard on the request. Ms. Guerriero fails to convey the entire circumstance behind her request, including the fact that the electronic evidence she seeks is currently the subject of a Chapter 119 request, as well as potential civil litigation which may ensue for non-production. Again, these attempts by Ms. Guerriero seeks to skirt the dictates of the Florida Sunshine Law.

10. The Defendant requests an opportunity to be heard on this request and again asserts that this motion should be stricken unless all parties are notified and available for hearing.

11. There is no lawful basis for the Court to grant this request and undersigned counsel is opposed to Ms. Guerriero's motion.

12. Undersigned counsel is unavailable on August 5, 2019.

WHEREFORE, based on the foregoing grounds, the Defendant respectfully request that this Court grant this Motion to Strike Motion for Return of Personal Property Filed by Non-Party Nicole Guerriero.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida E-Portal to the Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, FL 33401, at CCDOVE@SA15.ORG; Non-Party Nicole Guerriero via email at Nikoli788@aol.com; and counsel for the City of Delray Beach, Lawonda Warren, via email at WarrenL@mydelraybeach.com, on this 23rd day of July, 2019.

Respectfully submitted,

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/s/ Nellie L. King
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